

UNITED STATES DISTRICT COURT

Eastern District of New York

Hercules Pharmaceuticals, Inc.

- v -

Cherne

Presiding Judge: **Joanna Seybert, Senior U.S.D.J.**Case No(s): **24-cv-5659-JS-AYS**Date: **10/1/2024**Start Time: **1:18 PM** Total Time: **1 hr. 20 mins.**

MINUTE ENTRY FOR A CIVIL PROCEEDING

SEALED PROCEEDING: ☐ Yes ☒ No

I. APPEARANCES:

Plaintiff : Hercules Pharmaceuticals, Inc.

Represented by : **Richard Schoenstein, and Brittany Lazzaro**

Defendant : Brant Cherne

Represented by : **Jamie Felsen, Michael Mauro, and Robert Milman**

Represented by :

Represented by :

Represented by :

Represented by :

Represented by :

Represented by :

Other Appearances: _____

Court Reporter(s): **Paul Lombardi**

FTR Time(s): _____

Courtroom Deputy: **Eric L. Russo**

II. PROCEEDINGS HELD:

- | | | | |
|---|---|--|---|
| <input checked="" type="checkbox"/> In-Person | <input type="checkbox"/> Bench Trial (<i>see pg. 3</i>) | <input type="checkbox"/> Jury Selection (<i>see pg. 3</i>) | <input type="checkbox"/> Pre-Trial Conference (<i>see pg. 2</i>) |
| <input type="checkbox"/> By Telephone | <input type="checkbox"/> Contempt Hearing (<i>see pg. 2</i>) | <input type="checkbox"/> Jury Trial (<i>see pg. 3</i>) | <input type="checkbox"/> Settlement Conference (<i>see pg. 2</i>) |
| <input type="checkbox"/> By Video | <input type="checkbox"/> Evidentiary Hearing (<i>see pg. 2</i>) | <input checked="" type="checkbox"/> Motion Hearing (<i>see pg. 2</i>) | <input type="checkbox"/> Show Cause Hearing (<i>see pg. 2</i>) |
| | <input type="checkbox"/> Fairness Hearing (<i>see pg. 2</i>) | <input type="checkbox"/> Preliminary Injunction Hearing (<i>see pg. 2</i>) | <input type="checkbox"/> Status Conference (<i>see pg. 2</i>) |
| | <input type="checkbox"/> Jury Deliberation (<i>see pg. 3</i>) | <input type="checkbox"/> Pre-Motion Conference (<i>see pg. 2</i>) | |

☐ Other Proceeding: _____

III. SUMMARY OF THE PROCEEDINGS:

- ☒ Motion Hearing _____ held.
- ☒ Hearing held regarding the defendant's Motion for Temporary Restraining Order (see DE 39) and Motion to Unseal (see DE 43) _____.
- ☒ The parties presented their oral arguments to the Court.
- ☐ Witness(es) were called for the: ☐ _____; ☐ _____; ☐ _____.
- ☐ Exhibits were entered into evidence.
- ☒ The Court made the following ruling(s):
- ☒ GRANTED as to the defendant's Motion to Unseal _____.
- ☒ DENIED as to the defendant's Motion for Temporary Restraining Order _____.
- ☐ GRANTED, in part, as to _____.
- ☐ Found MOOT as to _____.
- ☐ Decision RESERVED as to _____.
- ☒ The Court's decision: ☒ was entered on the record; ☐ will be entered under a separate order.
- ☒ See Section V and/or VI (page 5) for additional details and/or rulings.
- ☐ _____ held.
- ☐ The parties advised the Court of the status of the case.
- ☐ The parties presented their oral arguments to the Court regarding the proposed motion(s).
- ☐ The following briefing schedule was set:
- ☐ _____ shall serve the motion and all supporting papers by _____.
- ☐ _____ shall serve the opposition to the motion and all supporting papers by _____.
- ☐ _____ shall serve the cross-motion and all supporting papers by _____.
- ☐ _____ shall serve the reply and all supporting papers by _____.
- ☐ _____ shall serve the opposition to the cross motion and all supporting papers by _____.
- ☐ _____ shall serve the reply to the cross motion and all supporting papers by _____.
- ☐ The parties are directed to file their motion papers in accordance with the Court's Individual Rules regarding BUNDLING (see Rule III).
- ☐ The Court will not grant any extensions of the deadlines set forth above.
- ☐ The parties were directed to file a proposed briefing schedule on or before _____.
- ☐ The Court deemed, or previously deemed, this case TRIAL READY.
- ☐ The Court set the following pre-trial submission schedule:
- ☐ Motion(s) in Limine and all supporting papers shall be filed by _____.
- ☐ Opposition(s) to Motions in Limine and all supporting papers shall be filed by _____.
- ☐ Reply(ies) to Motions in Limine and all supporting papers shall be filed by _____.
- ☐ Proposed voir dire questions and a brief case summary shall be filed by _____.
- ☐ Proposed exhibits and a witness list shall be filed by _____.
- ☐ Proposed jury charge and verdict sheet shall be filed by _____.
- ☐ The Court will not grant any extensions of the deadlines set forth above.
- ☐ The parties are directed to submit courtesy copies of their submissions in accordance with the Court's Individual Rules (see Rule IV).
- ☐ The parties are directed to e-mail copies of the proposed case summary, voir dire questions, witness list, jury charge, and verdict sheets in Word format to the Chambers e-mail at "Seybert_Chambers@nyed.uscourts.gov".
- ☐ The parties were directed to file a proposed pre-trial submission schedule on or before _____.
- ☐ The Court will enter a separate order outlining the pre-trial submission schedule.
- ☐ See Section V and/or VI (page 5) for additional details and/or rulings.
- ☐ Fairness Hearing/Settlement Conference held.
- ☐ The parties outlined the details of the settlement agreement.
- ☐ No party(ies) appeared opposing the settlement.
- ☐ Objections to the proposed settlement were heard.
- ☐ The Court made the following ruling(s):
- ☐ GRANTED as to the: ☐ Motion for Settlement Approval; ☐ Motion for Attorney Fees.
- ☐ DENIED as to the: ☐ Motion for Settlement Approval; ☐ Motion for Attorney Fees.
- ☐ GRANTED, in part, as to the: ☐ Motion for Settlement Approval; ☐ Motion for Attorney Fees.
- ☐ Found MOOT as to the: ☐ Motion for Settlement Approval; ☐ Motion for Attorney Fees.
- ☐ Decision RESERVED as to the: ☐ Motion for Settlement Approval; ☐ Motion for Attorney Fees.
- ☐ The Court's decision: ☐ was entered on the record; ☐ will be entered under a separate order.
- ☐ See Section V and/or VI (page 5) for additional details and/or rulings.

☐ Bench Trial held.

- ☐ Opening statements heard from: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Opening statements waived by: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Witness(es) were called for: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Exhibits were entered into evidence.
- ☐ _____ rests.
- ☐ _____ rests.
- ☐ _____ rests.
- ☐ Summations were heard from: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Summations waived by: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ The Court set the following post-trial submission schedule:
- ☐ _____ shall file proposed Findings of Fact and Conclusions of Law by _____.
- ☐ _____ shall file proposed Findings of Fact and Conclusions of Law by _____.
- ☐ _____ shall file proposed Findings of Fact and Conclusions of Law by _____.
- ☐ _____ shall file proposed Findings of Fact and Conclusions of Law by _____.
- ☐ The Court's decision: ☐ was RESERVED; ☐ was entered on the record; ☐ will be entered under a separate order.
- ☐ See Section V and/or VI (*page 5*) for additional details and/or rulings.

☐ Jury Selection/Voir Dire held.

- ☐ The prospective jurors were sworn and given preliminary instructions by the Court.
- ☐ The prospective jurors were asked questions touching upon their qualifications to serve as jurors.
- ☐ A jury of _____ were selected and are satisfactory to all parties.
- ☐ See Section V and/or VI (*page 5*) for additional details and/or rulings.

☐ Jury Trial held.

- ☐ A jury of _____, previously selected by _____, are satisfactory to all parties.
- ☐ The selected jurors were sworn as trial jurors.
- ☐ The jurors were given preliminary instructions by the Court.
- ☐ Opening statements heard from the: ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Witness(es) were called for the: ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Exhibits were entered into evidence.
- ☐ _____ rests.
- ☐ _____ rests.
- ☐ _____ rests.
- ☐ A Charge Conference was held with the Court and counsel.
- ☐ Summations were heard from: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ Summations waived by: ☐ all parties; ☐ the _____; ☐ the _____; ☐ the _____.
- ☐ The Court charged the jury.
- ☐ See Section V and/or VI (*page 5*) for additional details and/or rulings.

☐ Jury Deliberation held.

- ☐ Jury Notes were received and marked as Court Exhibits.
- ☐ The Court instructed the jury to continue their deliberations pursuant to Allen v. United States (*Allen Charge*).
- ☐ The jury rendered their verdict.
- ☐ The jurors were polled as to their verdict.
- ☐ The Verdict Sheet was received and marked as a Court Exhibit.
- ☐ The jurors were excused with the thanks of the Court.
- ☐ See Section V and/or VI (*page 5*) for additional details and/or rulings.

IV. FURTHER PROCEEDINGS SET:

- ☒ No further proceedings have been set at this time.
- ☐ Bench Trial is set for _____ at _____ before _____, _____.
- ☐ Contempt Hearing is set for _____ at _____ before _____, _____.
- ☐ Evidentiary Hearing is set for _____ at _____ before _____, _____.
- ☐ Fairness Hearing is set for _____ at _____ before _____, _____.
- ☐ Jury Deliberation is set for/shall continue on _____ at _____.
- ☐ Jury Selection is set for _____ at _____ before _____, _____.
- ☐ Jury Trial is set for _____ at _____ before _____, _____.
- ☐ Motion Hearing is set for _____ at _____ before _____, _____.
- ☐ Preliminary Injunction Hearing is set for _____ at _____ before _____, _____.
- ☐ Pre-Motion Conference is set for _____ at _____ before _____, _____.
- ☐ Pre-Trial Conference is set for _____ at _____ before _____, _____.
- ☐ Settlement Conference is set for _____ at _____ before _____, _____.
- ☐ Show Cause Hearing is set for _____ at _____ before _____, _____.
- ☐ Status Conference is set for _____ at _____ before _____, _____.
- ☐ The Court ordered the proceeding(s) above to be held via the Court's teleconferencing system. Parties are directed to dial the following telephone number at the designated time: **877-336-1839, access code 7231185.**
- ☐ The Court ordered the proceeding(s) above to be held by video, via **ZoomGov**. The parties on the case will be sent a separate notice by the Courtroom Deputy with instructions on how to log into the video meeting as the scheduled date approaches.
- ☐ See Section V and/or VI (*page 5*) for additional details regarding the proceeding(s) set.

**** INTENTIONALLY LEFT BLANK ****

V. OTHER RULINGS MADE DURING THE PROCEEDINGS:

☐ **The record of this proceeding was deemed SEALED.** Transcripts of this proceeding can be made available to the Court, the defendant(s), defense counsel, and the Government **ONLY**. Any other non-party must file a written request to the Court for permission to receive a copy of the transcripts.

☒ The Court made the following rulings:

- For the reasons stated on the record, the defendant's letter dated 9/26/2024 (see DE 43) shall be considered, and re-classified, as a Motion to Unseal and that motion is granted for the sole purpose of allowing defense counsel to obtain copies of the requested documents from the Clerk's Office.

VI. ADDITIONAL RULINGS:

☐ The Court makes the following additional rulings (*not addressed during the proceedings*):